February 26, 2001

Mr. Randy Bates
Division of Governmental Coordination
Office of the Governor
P.O. Box 110030
Juneau, Alaska 99811-0030

Re: Comments on Proposed Changes to Alaska Coastal Policy Council Regulations (6 AAC 50)
OUR FILE NO.:
600.100.1506

Dear Mr. Bates:

Sealaska Corporation appreciates the opportunity to comment on the Alaska Coastal Policy Council's proposed comprehensive revisions to 6 AAC 50. The revisions are intended to clarify review participants' role and responsibilities in coastal management consistency determinations, and Sealaska believes that, by-and-large, the draft does so very effectively.

At the same time, everyone involved in coastal management issues has a keen interest in ensuring that this first, and hopefully enduring, redraft of 6 AAC 50 will succeed in removing the considerable ambiguities in the existing regulations and in clearly defining the core mission and mechanics of the ACMP. Regulations this fundamental and uniquely complex require more than one round of public participation. For this reason, Sealaska supports the Alaska Oil and Gas Association's recommendation that, after receipt and distribution of all agency and public comments on the draft, DGC schedule a stakeholder roundtable discussion on the draft. The varying comments that the Council will receive on the draft will be of most value if they are thought through in the kind of broad-based working dialogue recommended by AOGA. After that roundtable workshop, Sealaska would hope that the resultant revisions would be circulated for one more chance at public comment.

As to the substance of the regulations, Sealaska has three general comments at the outset:

1. *Revisions to the substantive ACMP standards*. In its proposed amendments to 6 AAC 50, the Council is applying the lessons we have all learned from 16-years' experience with these regulations. As our enclosed September 22,1999 letter to Director Galvin explains, experience has likewise proven the need to address ambiguities in 6 AAC 80's substantive ACMP standards—and particularly the habitat standard. While the ACMP's land and water use standards themselves may be beyond the scope of the Council's current rulemaking, Sealaska hopes that, upon adoption of these regulations, the Council (and the Division) will devote similar energies to refurbishing the Council's substantive standards.

2. *Relationship of 6 AAC 50 to other regulations.* One principal purpose of the draft regulations is to better clarify that only one consistency determination is rendered on a project. Accordingly, the final regulations should address 6 AAC 80.010(b). That procedural regulation, which has not been amended since 1981, remains capable of being construed to require "each state agency" to make coastal consistency findings on a project in every case. We think that this construction is unreasonable, and neither DGC nor the Council read this old regulation in this way. To the extent that §010(b) ever required multiple consistency determinations on one project, that requirement has been implicitly repealed by subsequent statutes (including AS 44.19.145(a)(11) and AS 46.40.096) and 6 AAC 50 itself. Nevertheless, advocates unfamiliar with the ACMP continue to argue that the persistence of this old regulation means that multiple consistency determinations are still required on each project. To clean up this outdated procedural regulation, Sealaska urges the Council to amend the pertinent portion of 6 AAC 80.010(b) to read:

> *In authorizing uses or activities in the coastal area under its statutory authority, and subject to 6 AAC 50, each state agency shall grant authorization if...*

3. *Clarifying responsibilities for projects requiring both federal and state permits.* Although, to anyone familiar with the ACMP, it is clear that DGC will render the only consistency determination in cases where a project requires a state permit and either: (a) is a federal activity; or (b) requires a federal permit, neither the draft nor the current regulations say so in so many words. As a result, the state has been faced with claims that the failure to deal specifically with this particular type of project means that a "federal" and a "state" consistency determination must both be done in this instance. While the state will ultimately win any such argument, a goal of the Council's new rules is to avoid the expense and delay attendant any regulatory ambiguity. This is the occasion to put an end to even faint uncertainties, and Sealaska would therefore recommend the following amendments to the draft:

> 6 AAC 50.005(c): *The DGC consistency response under 6 AAC 50.305-.395 and 6 AAC 50.405-.495 is the only consistency determination required for a project that is a federal activity or federally regulated activity that also requires a resource agency authorization.*

> 6 AAC 50.035(c*): DGC shall coordinate the consistency review and is the only state agency authorized to issue a consistency determination for a project that requires an authorization from either: (1) ~~an authorization from~~ two or more resource agencies~~:~~;*

(2) a resource agency and a federal agency; or (3) if the project is a federal activity, a resource agency.

6 AAC 50.205(b): *The only instance in which a ~~A~~ resource agency ~~shall~~ will coordinate the consistency review and issue the consistency determination ~~for a~~is when a project that is not a federal activity ~~that~~ requires an authorization from only that agency and no federal authorization.*

6 AAC 50.770: *A federal general permit or nationwide permit is reviewed for consistency only by DGC in accordance with 6 AAC 50.305-.395, whether or not the activity covered by the federal permit also requires one or more state resource agency authorizations.*

In evaluating these recommendations, we would ask that the Council keep in mind that there is a difference between a fair and informed construction of regulations, and latent ambiguities that self-interested advocates might seek to exploit. The latter can be the source of expensive and dilatory litigation, and Sealaska would urge the Council to take this opportunity to remove as many of these potential traps as possible.

Sealaska's more particularized suggestions, and the rationales for each, are as follows:

- Amend 6 AAC 50.005(a) to read: *A project that ~~may affect~~will have a direct and significant impact on any coastal use or resource is subject to the consistency review process described in this chapter when any activity that is part of the project*

Rationale: The "may affect" threshold gives the ACMP its broadest possible reach, sweeping within it even the most inconsequential activities and esoteric "effects." Its vagueness and overbreadth will lead to controversy at least, and litigation at worst. Since at least one resource agency (or DGC) will review every activity in the coastal zone that needs any federal or state permit, the state will ultimately make the decision on which activities will cause "significant" impacts. As a result, a "direct and significant" threshold gives the state a valuable tool to concentrate its limited resources on coastal issues that really matter.

- Delete 6 AAC 50.025(b)(3).

Rationale: In enacting the ACMP, the Alaska Legislature chose the "existing authorities" option for applying the program's substantive standards. Activities already subject to some state or federal permitting process would be subject to ACMP review; conversely, otherwise unregulated activities would not. This subsection is inconsistent with that policy. It, in effect, requires a state coastal permit for activities that are not otherwise subject to state regulation.

- Amend 6 AAC 50.045 to read: *Nothing in this chapter displaces or diminishes the authority of any state agency with respect to coastal uses and resources under that agency's own statutory authorities.*

Rationale: 6 AAC 50 does affect state agencies' authority with respect to rendering coastal management consistency determinations under the ACMP.

- Amend 6 AAC 50.055(b)(1) to read: *... is considered to have expertise in the interpretation ~~and application~~ of its program; and*

Rationale: A coastal resource district does not necessarily have expertise in "applying" its program. "Application" may involve a chemical, biological or other technical issue for which the district has no in-house expertise at all.

- Amend 6 AAC 50.220(a)(1) to read:

(1) a completed CPQ that includes
(A) a ~~complete and detailed~~ description of the proposed project;
(B) a certification that the proposed project complies with and will be conducted in a manner consistent with the ACMP; the certification shall state, "The proposed project complies with the applicable enforceable policies of the ACMP and will be conducted in a manner consistent with the program;"
~~(C) comprehensive data and information sufficient to support the applicant's consistency certification;~~
(~~D~~C) maps, diagrams, technical data and other relevant material that ~~precisely~~ describe the project site location, topographical information, township, range, section, and meridian, and other site specific information; and

Rationale: Section 220(c) requires an applicant to describe its project with "sufficient specificity" to assess compliance with the ACMP, and that should be sufficient. The further requirement here for "complete" and "comprehensive" data is overbroad, vague, and will usually be out of all proportion to the project being proposed.

- Amend 6 AAC 50.235(b)-(c) to read:

(b) A project ~~may~~ will be subject to a 30-day consistency review ~~when~~ unless the project requires an authorization from a ~~the coordinating agency, in consultation with each~~ resource agency or ~~that requires an authorization for the project and any potentially~~ affected coastal resource district, ~~determines that the project is likely to have minimal impact on coastal uses and resources~~that by law cannot be issued in 30 days.
(c) ~~The coordinating agency may convert a 30-day consistency review to a 50-day review at its own initiative, or if additional information, including public comment or consultation with the applicant or a review participant, indicates the project is likely to have more than minimal impact on coastal uses or resources~~If a project is not subject to a 30-day consistency review under (b) of this section, the coordinating agency will conduct a 50-day consistency review.

Rationale: The ACMP was purposefully structured to fit within existing regulatory review timeframes. See AS 46.40.200. The legislature rejected a "separate coastal permit" approach

because it did not want the ACMP to result in additional regulatory delays or procedural burdens. The original intent of the 30/50-day distinction was to dovetail with existing resource agency permits, which were generally issuable in 30 days unless some statutory public notice procedure was applicable. To honour the ACMP's intent, we recommend that the Council link the 30/50-day to the time frames of the underlying resource agency authorizations. We think that this will result in varying the length of the review period according to a project's "impacts," since high-impact projects generally require at least one resource agency permit that involves its own public notice and 50 day review period.

- Amend 6 AAC 50.240(a) to read: *When a project requires an authorization from two or more resource agencies, DGC shall~~; following receipt of a complete consistency review packet, obtain concurrence from the authorizing resource agencies regarding~~ establish a start date for the consistency review ~~that coordinates the consistency review with the resource agency authorization review process~~immediately following receipt of a complete consistency review packet.*

Rationale: Once a completed consistency review packet is received, there should be no need for further delay in commencing the review period. 6 AAC 50.280(a)(1) already gives DGC the ability to extend review deadlines to meet other agencies' review requirements.

- Amend 6 AAC 50.245(c) to read: *The coordinating agency ~~shall~~ will, in its discretion, request from the applicant additional information relevant to the proposed project.*

Rationale: The coordinating agency should be responsible for screening requests for additional information. When additional information pertains solely to ACMP concerns, rather than a resource agency's own statutory functions, the coordinating agency should decide whether it is necessary, because it will be the coordinating agency that finally makes the consistency determination. We would expect, of course, that "due deference" would be provided when an agency asks for information within its area of expertise.

- Amend 6 AAC 50.255(c) to read: *In its consistency review comment, a review participant may address an enforceable policy outside their area of expertise. However, ~~The~~ the coordinating agency ~~shall~~ will only give a resource agency or coastal resource district ~~with expertise~~ due deference within that agency's or district's area of expertise.*

Rationale: As drafted, the language is overbroad, and it suggests that any agency with some "expertise" will be given due deference outside that area of expertise. That is not the subsection's intent, and the ambiguity should be removed.

- Amend 6 AAC 50.260(b) to read: *In developing a proposed consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give due deference to the comments of resource agencies and affected coastal resource districts with approved programs within the agencies' and districts' respective areas of expertise.*

Rationale: While this modifier is implicit in the definition of "due deference," the fact that a resource agency does not automatically receive "deference" on its entire comment continues to

cause unnecessary controversy, and ought to be cleared up here.

- Amend 6 AAC 50.265(c) to read: *A final consistency determination is a final administrative order and decision under the ACMP. Each final consistency determination shall contain the following statement: "Any person adversely affected by this final consistency determination must file an appeal of this determination in Alaska Superior Court within 30 days of the determination's issuance; otherwise, that person's right to contest this determination will be waived."*

Rationale: This addition assures consistency with Alaska Rule of Appellate Procedure 602(a)(2).

- Amend 6 AAC 50.270(b) to read:

(b) The final consistency determination will be issued
(1) five days after the review participants receive the proposed consistency determination when the coordinating agency does not receive a timely request for a director-level elevation under 6 AAC 50.610(a) or a notice of petition under 6 AAC 50.620;
(2) five days after the review participants receive a director-level proposed consistency determination when a notice of petition, a notice of intent to pursue a petition under 6 AAC 50.610(e), or a request for elevation to the commissioners under 6 AAC 50.610(h) is not filed on the director-level proposed consistency determination;
(3) as soon as practicable after the council dismisses a petition when a proposed consistency determination or director-level determination is subject to a petition and there is not a request for elevation to the commissioners;
(4) five days after the review participants receive the revised proposed consistency determination following a remand decision by the council on a petition, and when there is not a request for elevation to the commissioners; or
(5) no later than 15 days after the director-level proposed determination is elevated to the commissioners' for a decision.

Rationale: Without the clarification and cross-references suggested here, a reader unfamiliar with the ACMP will not understand the terminology being introduced for the first time here, and the subsection will become a source of confusion.

- Amend 6 AAC 50.275(g) to read: *When there is an administrative appeal or additional review under an agency's statutory or regulatory authority, a resource agency may modify a condition identified in the final consistency determination if the ~~deciding~~ coordinating agency finds the project will remain consistent with the ACMP.*

Rationale: As written, Sealaska believes that this language violates AS 44.19.145(a)(11) and AS 46.40.096, in that it purports to grant a single resource agency the authority (in an albeit limited circumstance) to render a consistency determination in circumstances where the legislature has given that authority to the Division. If a resource agency changes the nature of a project through an administrative appeal, even under its own authorities, that "revised" project must be reviewed by the agency charged by law with determining its consistency (in multiple-

permit cases, the Division). [1]/

- Amend 6 AAC 50.275(j) to read: *Notwithstanding a consistent finding for a project, a resource agency may deny approval of an authorization application under the agency's own statutory authorities*.

- Amend 6 AAC 50.280(a)(1) to read: *The coordinating agency and resource agency may agree to modify the review schedule ~~as necessary to coordinate the consistency review with the~~to the extent required by that agency's statutory or regulatory authorization review process, including a DNR disposal of interest in state land, provided the length of time for receipt of comments is at least as long as under 6 AAC 50.250.*

Rationale: This is consistent with existing 6 AAC 50.110(b)(10), in that extensions of the deadlines ought to be allowed only when they are actually required to coordinate with another statute or regulation.

- Amend 6 AAC 50.280(a)(2) to read: *when the coordinating agency requests additional information from the applicant under 6 AAC 50.245, the coordinating agency may modify the review schedule as necessary until the requesting review participant receives the information and the coordinating agency considers it adequate within the timeframe identified under 6 AAC 50.245(e).*

Rationale: Again, the coordinating agency should serve as a screen both for requests for further information and for determining when the new information is "adequate."

- Amend 6 AAC 50.280(a)(5) to read: *the coordinating agency may modify the review schedule as necessary to address an unusually complex issue raised during the course of the consistency review;*

Rationale: This is consistent with existing 6 AAC 50.110(b)(9). Extensions of the deadlines should be the exception. There should be something unusual about the project to warrant one*;*

- Delete proposed 50.280(a)(6*).*

Rationale: This new provision is unwarranted, as ample time to review public comments is already built into the consistency review process.

- Amend 6 AAC 50.325(c) to read:

(c) To be complete, a federal consistency determination must include:

(1) a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the ACMP enforceable policies;

(2) a ~~detailed~~ description of the activity, its associated facilities, and their coastal effects;

(3) an evaluation of the proposed activity against applicable enforceable policies;

(4) ~~comprehensive data and~~ information sufficient to support the federal agency's consistency statement;

(5) a completed coastal project questionnaire;

(6) a copy of any necessary resource agency authorization application; the application must meet the authorizing agency's statutory and regulatory requirements for completeness; and

(7) completed copies of all necessary federal authorization applications.

Rationale: See comment on proposed 6 AAC 50.220(a)(1), above.

- Amend 6 AAC 50.345(1) to read: *DGC ~~shall~~ will, in its discretion, submit the request for additional information to the federal agency*.

Rationale: See comment on proposed 6 AAC 50.245, above.

- Amend 6 AAC 50.375(d) to read: *In addition to the requirements in (c) of this section, when the state concurs with the federal consistency determination that a proposed federal activity is consistent with the ACMP, the proposed consistency response must either adopt the federal agency's consistency findings or include an evaluation of the project against applicable enforceable policies sufficient to support the consistent finding.*

Rationale: Where a federal agency has already provided detailed and adequate findings (as some federal agencies do), DGC should not be required to duplicate that effort when it agrees with those findings.

- Add a new 6 AAC 50.385(c) to read: *A final consistency response is a final administrative order and decision under the ACMP. Each final consistency response shall contain the following statement: "Any person adversely affected by this final consistency determination must file an appeal of this determination in Alaska Superior Court within 30 days of the determination's issuance; otherwise, that person's right to contest this determination will be waived."*

- Insert a new 6 AAC 50.390(3) (and renumber existing (3) accordingly) to read: *when there is an administrative appeal of an authorization for an activity that is part of a project, the deciding agency may not modify an alternative measure included on the resource agency authorization.*

Rationale: This point is as important here as it is with respect to Article 2.

- Amend 6 AAC 50.425(c) to read:

To be complete, a consistency certification must include a completed coastal project questionnaire which includes

(1) a ~~complete and detailed~~ description of the proposed project ;

(2) ~~comprehensive data and~~ information sufficient to support the applicant's

consistency certification;

(3) maps, diagrams, technical data and other relevant material that ~~precisely~~ describe the site location, topographical information, township, range, section, and meridian, and other site specific information;

(4) the applicant's consistency certification as required by (a) of this section, which shall state "The proposed project complies with the applicable enforceable policies of the Alaska coastal management program and will be conducted in a manner consistent with the program;" and

(5) a copy of any necessary resource agency authorization application; the application must meet the authorizing agency's statutory and regulatory requirements for completeness; and

(6) completed copies of all necessary federal authorization applications.

Rationale: See comment on 6 AAC 50.220(a)(1), above.

- Amend 6 AAC 50.445(2) to read: *DGC ~~shall~~ will, in its discretion, submit the request for additional information to the applicant*;

Rationale: See comment on proposed 6 AAC 50.245, above;

- Delete 6 AAC 50.455(c).

Rationale: This subsection's commitment to timeliness is conditional ("to the extent feasible") while, in 6 AAC 50.475(b) and 6 AAC 50. 485(a), firm deadlines are established for both a proposed and final consistency certification. Given the several opportunities for extensions, an open-ended "to the extent feasible" provision is unnecessary.

- Amend 6 AAC 50.485 by adding a new subsection (d) to read: *A final consistency response is a final administrative order and decision under the ACMP. Each final consistency response shall contain the following statement: "Any person adversely affected by this final consistency determination must file an appeal of this determination in Alaska Superior Court within 30 days of the determination's issuance; otherwise, that person's right to contest this determination will be waived."*

- Insert a new 6 AAC 50.490(3) (and renumber existing (3) accordingly) to read: *when there is an administrative appeal of an authorization for an activity that is part of a project, the deciding agency may not modify an alternative measure included on the resource agency authorization.*

Rationale: This point is as important here as it is with respect to Article 2.

- Amend 6 AAC 50.510 by adding a new subsection (f) to read: *The failure of any person, other than a review participant, to raise an issue during the public comment period constitutes a waiver of that person's right to raise that issue in any subsequent proceeding.*

Rationale: The Council should insist on a person's exhausting available administrative remedies. It is wasteful and unfair to allow someone to withhold an argument or claim until some later stage in the controversy—in other words, to sandbag. This requirement is increasingly common in modern administrative practice. The same requirement for review participants is dealt with, below, with respect to elevations.

- Amend 6 AAC 50.610(b) by inserting a new paragraph (3) to read*: issues raised and argued by the review participant at each available review stage.*

Rationale: See the immediately preceding comment.

- Delete 6 AAC 50.610(e).

Rationale: This provision violates AS 46.40.096(d)(3), which limits participation in elevations to the applicant, resource agencies and affected coastal resource districts.

- Amend 6 AAC 50.610(g) to read:

Within the fifteen days identified in (d)(2) of this section, the ~~participating resource agency directors~~coordinating agency shall

(1) attempt to resolve the disputed issue ~~and provide~~in light of the policy direction ~~to the coordinating agency~~provided by the directors of the participating resource agencies;

(2) prepare a director-level proposed consistency determination or response ~~that reflects the participating resource agencies' decision~~; and

(3) distribute the determination or response to each review participant, the applicant, and each person who submitted timely comments

Rationale: Under AS 46.40.096(d)(3), the responsibility for coordinating "subsequent reviews of proposed consistency determinations" (*i.e.* elevations) remains with the "reviewing entity," which will usually be DGC. While DGC will obviously act in accordance with policy guidance provided by the division directors, placing legal decision-making responsibility in a legally non-existent entity ("the directors") would create confusion, and it would not be lawful. Note that the language in 6 AAC 50. 610(j) regarding the commissioner-level decision is legally correct, and is parallel to our suggestion above.

- Amend 6 AAC 50.610(i) to read: *An elevation of the director-level proposed consistency determination or response to the resource agency commissioners shall follow the same format and requirements as (a) through (g) of this section. ~~Only resource agency commissioners may make a final decision~~.*

Rationale: The last sentence is legally incorrect (see above), and it is also inconsistent with subsection (k), which allows the commissioners to delegate their responsibility.

- Reconsider 6 AAC 50.620(e).

Rationale: The purpose of the "notice of intent" here is not apparent, particularly because it appears to be discretionary with the petitioner. If the petitioner has timely filed a petition on

the proposed consistency determination, it is automatically stayed pending any director-level elevation. It then would be automatically rekindled if the director-level determination was adverse to the petitioners' interest. The "notice of intent" seems superfluous, and it could lead to confusion as to whether a petitioner must file such a notice to preserve its rights.

- Insert a new subsection (c) in 6 AAC 50.630, and reletter all subsequent subsections accordingly: *The coordinating agency shall reject any claim in a notice of petition that is not based on an enforceable policy of an approved program of an affected coastal resource district, or for which the petitioner did not submit timely comments under 6 AAC 50.510(a)-(c).*

Rationale: Though this statutory ground for rejection (AS 46.40.096(e)(1)(A); AS 46.40.100(b)) is obliquely mentioned in the submission requirements of 6 AAC 50.620(d)(4), it should also appear in the "grounds for rejection" section.

- Amend 6 AAC 50.700(b) to read: *When a project includes both an activity that requires an individual consistency review and an activity that is subject to a categorical or general consistency determination or general concurrence under this article, ~~all activities shall~~only those activities requiring individual consistency review shall be included in the scope of a project subject to review ~~except as permitted under (d) of this section~~.*

Rationale: As written, this regulation would substantially diminish the value of using either general permits or the A-B lists to streamline routine environmental regulation. Many, if not most "projects" for which a "general consistency determination" has been issued (i.e. a general permit) will also require some individual permits. If (as the current language states) the need for some individual permit automatically subjects even the generally-permitted activity to individualized ACMP review (except in *de minimus* cases), then the general permit/concurrence itself would be rendered useless. Moreover, the effects of this policy will be magnified by the executive branch's continued inability to issue inter-agency general permits for classes of projects, such as temporary camps. The executive branch has always defended the absence of inter-agency general permits by arguing that a project needing, say, five individual permits would still benefit by having even one general concurrence/permit. But under this proposal, even that marginal benefit would be taken away. We understand that the drafters originally intended this subsection to apply only to general concurrences under the A or B List. But even in this more limited context, Sealaska fails to see any public policy rationale for reopening consistency issues already decided. Note also, in this regard, that the language in this subsection (even if limited to the A and B Lists) is inconsistent with 6 AAC 50.720(c), which (we think appropriately) states that an activity placed on the A List "is not subject to further consistency review."

- Delete 6 AAC 50.700(d).

Rationale: If the changes to 6 AAC 50.700(b) recommended above are made, this subsection is no longer necessary.

- Amend 6 AAC 50.710(d) to read: *DGC will amend the A list on its own initiative or at the request of a resource agency, ~~or~~ coastal resource district or other person, based on new*

information regarding the impacts of a listed activity, including cumulative impacts of the activity on coastal uses or resources. Any person may petition DGC to amend the A list. Within 60 days of receipt of a petition, DGC shall either reject the petition or distribute and publish the proposal under (e) of this section. DGC may summarily reject the petition if a substantially similar activity was reviewed for possible inclusion on the A or B list within the past three years, or if the activity either: (1) is not likely to occur with sufficient regularity to warrant the cost of review under (e) of this section; or (2) clearly does not meet the standards of (f) of this section.

Rationale: A procedure should exist for the regulated public to develop listing proposals of its own, such as the draft temporary camp general permit that Sealaska submitted to the executive branch six years ago. And while proposals can now be made informally, the quality of decision-making is always improved when the agency is required to come to grips with the proposal, and to articulate its reasons for rejecting serious new suggestions from the private sector.

- Amend 6 AAC 50.730(d) to read: *DGC will amend the B list on its own initiative or at the request of a resource agency, ~~or~~ coastal resource district or other person, based on new information regarding the impacts of a listed activity, including cumulative impacts of the activity on coastal uses or resources. Any person may petition DGC to amend the B list. The petition must include any proposed standard alternative measures. Within 60 days of receipt of a petition, DGC shall either reject the petition or distribute and publish the proposal under (e) of this section. DGC may summarily reject the petition if a substantially similar activity was reviewed for possible inclusion on the A or B list within the past three years, or if the activity either: (1) is not likely to occur with sufficient regularity to warrant the cost of review under (e) of this section; or (2) clearly does not meet the standards of (f) of this section.*

Rationale: See comment on 6 AAC 50.710(d), above.

- Amend 6 AAC 50.760(a) to read: *A resource agency that develops a general permit under its statutory or regulatory authority shall subject the general permit to ~~an~~ a ~~individual~~ consistency review in accordance with the procedures identified in (b) of this section if the activities covered under the general permit may affect coastal uses or resources.*

Rationale: Saying that a "general" permit is subject to an "individual" consistency review is confusing, and may encourage someone to argue that individual activities authorized by the general permit will be subject to their own site-specific consistency review, which is not the case.

- Amend 6 AAC 50.810(b) to read: *A modification that is proposed to a project for which a final consistency determination or response has been issued shall be subject to a consistency review when the proposed modification will likely cause additional direct and significant impacts to coastal uses or resources and...*

Rationale: This proposed change is consistent with Sealaska's proposed amendment to 6 AAC 50.005, above.

* * *

Thank you in advance for the consideration that we know you will give to our concerns. And our congratulations again on what Sealaska believes to be, overall, an excellent starting point to clarify a potentially confusing and complex inter-governmental structure.

Sincerely,

SEALASKA CORPORATION

Richard Harris
Senior Vice President
Natural Resources

cc (w/encl.): AFN—Mr. Nelson Angapak
AFA—Mr. Jack Phelps
Alaska Miners Association—Mr. Steve Borell
Chugach Alaska Corporation—Mr. Rick Rogers
AOGA—Ms. Judy Brady
Resource Development Council

[1] / If the Council decides against this change, we would recommend that the subsection contain explicit disclaimers stating that the "deciding agency" is allowed only to examine the consistency of the revised condition, and that nothing in this subsection is intended to confer any authority on the deciding agency to review the project's overall consistency with the ACMP. Otherwise, this subsection will create confusion and undermine the Council's effort to create an unambiguous appellate path. It would also threaten to allow forum shopping, where an aggrieved person can choose between the "deciding agency" and the "coordinating agency" in picking a forum for raising some coastal management concerns.